

**The Chartered Institute for Securities & Investment**

**25<sup>th</sup> June 2015**

**“Guernsey Financial Advice Standards – Qualified & Competent”**

**Rosemary Stevens, Assistant Director, Conduct Unit**

Good afternoon everyone and thank you for that welcome.

From a personal point of view, I am not sure whether I should be relieved or concerned to see so many unfamiliar faces here today. For those of you that don't know me, I head up the Commission's Conduct Unit which was established in the summer of 2013. The Conduct Unit is responsible for the supervision of insurance intermediaries and the 4 retail banks licensed in the Bailiwick. We also have a strong focus on conduct – Commission-wide together with consumer education and awareness.

One of the unit's responsibilities has been and still is to implement the Guernsey Financial Advice Standards (“GFAS”) and on this the Conduct Unit has worked very closely with the Investment Supervision and Policy Division and with Louise Bougourd in particular. In implementing GFAS, wherever possible, we have streamlined the requirements under the conduct of business rules and codes for both insurance intermediaries and investment licensees to make life more consistent and, dare I say, easier for both industry and the regulator.

That said I am not an expert on the supervision of investment licensees. Fortunately though, Louise, who I am certain all of you will know, is here to fill in these gaps from an investment perspective.

**Introduction**

The subject of the FSA's Retail Distribution Review was first mentioned as a significant policy issue in the Commission's annual industry presentations in September 2011. This was the UK's response to long-standing problems in the intermediary sector, especially around mis-selling. You may recall that the Commerce and Employment Department issued a consultation paper in 2012 and, having considered the representations it received, asked the Commission to implement GFAS with commencement to be effective in 2015.

Commerce and Employment identified that their proposals for GFAS contained the following key areas:

- Educational requirements to be compliant with FSA (now FCA) level 4;
- Both commissions and fees to be allowed but both will require full disclosure; and
- Categorisation of advice.

In September 2013 the Commission issued a consultation paper setting out its proposals for changes to rules and codes that were seen to achieve the desired objectives. The representations received to this consultation were primarily in respect of the qualifications

that the Commission had identified as being of an acceptable standard, and as a result of which, the Commission extended the contents of the table to include relevant higher level qualifications – i.e. those at a level above FCA level 4 – and include more lower level and historic level 4 qualifications to be supplemented by appropriate gap fill.

A second consultation paper proposed to streamline the two sets of conduct of business rules for investment and insurance intermediary licensees, wherever possible, to align the two sectors with common requirements and provided drafts of the proposed rules and codes within the consultation paper. This also proposed the existing conduct of business rules should be repealed and new rules brought into effect with a separate set of conduct of business rules for insurance managers. In addition the Commission also proposed changes in relation to the Code of Conduct for Authorised Insurance Representatives which would result in the existing code being repealed and new codes being introduced.

This chart identifies how the Guernsey Financial Advice Standards have been implemented in relation to the relevant regulatory laws for investment and insurance intermediaries and managers.

The new rules and codes came into effect on 1 January 2015. It is important to appreciate that the new rules have an impact on investment licensees, insurance intermediary licensees – including those who do general insurance business - and insurance manager licensees and not just those who are directly affected by the qualification and disclosure requirements of GFAS.

So what has changed? The key areas that have been addressed relate to product pool description requirements, remuneration disclosure, mandatory qualifications and continuing professional education. The rules also require Financial Advisers to be authorised and licensees to have training and competency schemes. As I have already mentioned we also took the opportunity to streamline the conduct of business rules across the sectors to reflect common requirements.

You may ask what are we doing now? We have received details of all those that prior to 31 December 2014 gave advice on behalf of their firms and subsequently became Financial Advisers. There were circa 200 of these. Since 1 January, licensees have been required to notify us of changes to their Financial Advisers by completing a notification form that is available on our website. We have also been liaising with the professional bodies to introduce the Guernsey Statement of Professional Standing. This will be available later on in the year.

I would like to do a show of hands and ask you to put your hand up if you are currently a Financial Adviser? Please keep your hands up. Thank you.

Now I would like to ask - if those of you with your hands up - have contacted one of the accredited professional bodies to confirm that you are qualified to the standard set out by the Commission on the acceptable qualification table. Again, please keep your hand up. Thank you.

Finally, for those people who still have their hands up, please keep your hand up if you know that you need to apply for a Guernsey Statement of Professional Standing and who you will be applying to in order to obtain this.

Thank you – it is very encouraging to see that so many of you that put your hands up to my first question kept your hand up to the next two. For those of you that put your hand down, don't worry help is at hand during the course of our talk to point you in the right direction.

Finally, I would just like to do a show of hands on which accredited professional bodies you will apply to: CISI, CII, Other – CFA or IFS.

If anyone is considering applying to any other professional body, please either speak with me afterwards or contact me at the Commission.

### Qualified & Competent?

So turning to the title of our presentation – GFAS – Qualified and Competent, this slide shows an extract from the Licensees (Conduct of Business) Rules 2014.

This rule goes on to state that “For the avoidance of doubt, the *Commission* may specify time periods in which such qualifications must be obtained and the *licensee* and its *Board* must ensure that its *financial advisers* obtain the qualifications within the relevant time periods.”

The rule continues “In the event that qualifications are not obtained within the relevant period by any *financial adviser* of the *licensee*, the *licensee* and its *Board* must take such steps as are necessary to revoke the authorisation of the *financial adviser* and stop that individual from providing advice to *retail clients* until such time as the necessary qualifications are obtained. At that time, the *licensee* and its *Board* may wish to authorise that individual as a *financial adviser*.”

So what does this mean in reality? Well if you are already acceptably qualified and been appointed as a Financial Adviser by your firm, then that's fine - especially if you have confirmed that qualification with the CISI or another professional body. If you haven't checked that you meet the qualification requirements then by doing so now, you could save yourself a lot of heartache. If the accredited body determines that you do not meet the requirements you still have time to complete relevant gap fill or undertake an acceptable qualification – although if you are starting from scratch this could be challenging.

If you are here today in a Board or compliance capacity. Are you aware if your Financial Advisers have confirmed that they hold an acceptable qualification?

Hopefully I am speaking to the converted and no-one is in any doubt as to whether they are acceptably qualified. However these are the CISI qualifications that are deemed to be acceptable. The important thing is to check with the CISI on whether any gap-fill is required.

The training and competency page on our website has a link to the acceptable qualification table which holds a whole raft of other qualifications that the Commission has considered as being acceptable. These are in line with those that appear on the table issued by the FCA for the same activities.

A word of warning though - Beware - on 1 January 2016, the authorisation, for any Financial Adviser who was an existing adviser as at 31 December 2014 and who has failed to achieve an acceptable qualification, must be revoked by the licensee for whom they work. Grandfathering is not being allowed.

All those who were existing Financial Advisers, from next year, will have a minimum professional qualification.

Any Financial Adviser that has been appointed since 1 January 2015 and is new to the industry must have passed the regulatory module of a relevant qualification before they can be authorised by their employer as a Financial Adviser.

So what about Competency? How does that fit into the equation?

Whose responsibility is it to decide that a Financial Adviser is competent? The Commission? The CISI? The Financial Adviser his or herself? None of these? The conduct of business rules set out that the Licensee must assess the employee as being competent to do the role prior to authorising them as a Financial Adviser- providing, that is, as a minimum the Financial Adviser has also achieved the regulatory module of an acceptable qualification.

So what steps does the Commission expect a licensee to take in determining if an employee is competent to be authorised as a Financial Adviser. This is an area where the Commission is not currently prescriptive however we have published guidance in this area which is available on our website.

In summary though, we would expect all licensees to have in place a scheme which assesses and monitors each employee's ongoing competence in their respective roles, monitors the employee's progress and identifies individual training needs. This applies not only to Financial Advisers but to all employees of each licensee.

A firm's training and competency arrangements should equip employees with the skills and knowledge to enable them to deliver consistently fair outcomes for their customers.

Schemes should be easy to use, well documented and transparent to the licensee, the employee and the Commission. Although the Board of the licensee is responsible for the effectiveness of the scheme, the Board should consider whether training and competency should be delegated to a senior member of the licensee.

Employees should have a structured and documented training and development program tailored to their current or anticipated role, experience and any qualification needs. This program may include pre-defined key performance indicators against which the employee is assessed. Licensees must have in place clear criteria and procedures for assessing if an individual is competent in their respective role.

For any new employee there should be an initial assessment of their level of competence. This should be made during the recruitment and induction process to identify any gaps in knowledge and potential areas for development.

Those supervising employees should have the necessary coaching and assessment skills and the appropriate technical knowledge and experience to act as a competent supervisor. The level of supervision required should reflect the level of competence of the employee. In other words, a new employee should be closely supervised whilst those who are deemed competent through qualifications and/or experience will require less frequent monitoring. It is important to identify, for each skill, the level of competence that is required and what the learning outcome should be – in other words – what good looks like.

The Board of the licensee should receive sufficient management information to effectively monitor and supervise the performance of their employees.

Now, turning to Financial Advisers, a licensee may not authorise an employee as a Financial Adviser until that licensee has deemed them competent to perform that role - and the qualification criteria as published by the Commission have been met.

In assessing competence, there should be a documented assessment which may include observed client meetings, one to one meetings, ad-hoc file reviews, peer review of advice, training, CPD, complaints and client feedback. This is not an exhaustive list and we would expect this to be tailored to each licensee's business and the advice being given by the Financial Adviser. Other matters which should be taken into account are changes in the market and to products, legislation and regulation. This assessment should be done on an ongoing basis.

To assist you in determining competence, I would like to pose a few rhetorical questions that you should all be asking:

- Has your firm determined the knowledge and skills required to undertake each employee's role and discharge their responsibilities?
- Has your firm put in place clear criteria for individuals to be assessed as competent so that all parties involved understand when competence, including a good standard of ethical behaviour, has been reached?
- Does your firm assess the competence of its employees on a regular basis as well as assessing their training needs and the effectiveness of that training?
- Does your firm have development plans in place where employees have not reached or maintained the required standards?
- Does your firm maintain adequate records that evidence staff recruitment, qualifications and training given to support them in achieving competence and the on-going assessment of that competence?

I sincerely hope that this scenario will never arise but we should consider the question, "So what if a Financial Adviser is not thought to be competent?" Well, the answer to this depends on who makes this assessment. If a licensee has concern that one of its Financial Advisers is not competent, then, as a minimum, they should give serious consideration to revoking that individual's authorisation as a Financial Adviser until such time as that person has been re-assessed as competent. The licensee may also consider disciplinary measures if appropriate.

If it is the Commission that makes this assessment and the licensee has failed to address this lack of competence through its training and competency scheme and the actions it has taken, then the licensee will be seen to have not met its obligations under the conduct of business rules or possibly the minimum licensing requirements in the law. Depending on the extent of the Financial Adviser's incompetence and the failure of the licensee to supervise this effectively could have a range of consequences ranging from a risk mitigation plan being put in place, to, in serious cases, referral to the Commission's Enforcement Division.

You may ask why we are taking this so seriously. The thematic visits that the Commission undertook in 2012 and late 2013 highlighted the need for improvements to be made in the provision of advice to retail customers. I am unable to share with you the detail of examples that have been seen by the Conduct Unit and the Enforcement Division but there were examples here of extremely poor practice.

This was in addition to the request for Commerce & Employment Department to implement the Guernsey Financial Advice Standards. As I have mentioned these brought in specific qualification requirements for financial advisers and formalised expectations around

competence. However, the Principles of Conduct of Finance Business have been in place for many years and underlie the manner in which business should be conducted. It also makes good business sense to be professional in all our dealings.

It goes without saying that Guernsey needs to protect its funds industry. I have quoted the FCA here by saying “We want to deliver raised standards of professionalism that inspire consumer confidence and build trust” but I believe that this statement applies to us in Guernsey as well.

The Financial Stability Board is taking measures to reduce misconduct risk and their consequences. Their view is that the use of fines and sanctions although acting as a deterrent to misconduct is not enough in itself and that preventative approaches are also needed that can mitigate the risk of misconduct through improved market organisation, structure and behaviour of the markets. They have focused on the role of incentives and compensation packages and embedding a review of these by national authorities to introduce reforms and dis-incentivise misconduct.

The FSB has also considered the effect of governance and culture and the existence of weak processes for defining, detecting and addressing misconduct risks. They are expecting clear standards and guidance on conduct to address these issues together with ensuring that industry codes of conduct and other standards are binding and enforceable on market participants – both firms and individuals – together with improved individual responsibility and accountability.

These measures will be dependent on competent and ethical employees being employed by competent and ethical firms.

In addition, MiFID II requires the European Securities and Markets Authority to develop Guidelines specifying criteria for the assessment of knowledge and competence and consequently, in April, ESMA issued a consultation paper<sup>1</sup> on their proposed draft guidelines to achieve this.

ESMA considers that the introduction of guidelines on knowledge and competence should secure commitment from all stakeholders. This in turn will increase the emphasis on providing evidence that a firm’s staff have attained appropriate knowledge and competence and, that over time, this should lead to better outcomes for clients and investment firms.

The consultation paper includes draft guidelines and the questions raised explore such areas as:

- Whether a period of not less than five consecutive years of appropriate experience of providing the same relevant services at the date of application of the guidelines would be sufficient to meet the requirement under knowledge and competence, provided that the firm has assessed an individuals’ knowledge and competence;
- The level and intensity of knowledge and competence expected for those providing advice compared to those giving information;
- The requirements in the guidelines; and
- Whether the requirements should be extended.

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<sup>1</sup> ESMA Consultation Paper – Draft guidelines for the assessment of knowledge and competence – 23 April 2015 | ESMA/2015/753

Interestingly, one of the requirements in the guidelines is that employees giving investment advice understand how the investment product may not be suitable for the client, having assessed the relevant information provided by the client against potential changes that may have occurred since the relevant information was gathered. I have mentioned this as being a different way of looking at suitability. By understanding why a product may not be suitable, helps determine if that product is suitable.

The ESMA guidelines also include illustrative examples of the application of certain aspects of the guidelines. This slide illustrates 3 that I thought would be particularly relevant for today and I would like you to think about.

Firstly, the firm adopts a code of ethics. Although we as members of the CISI adopt a code of ethics, can the same be said of the firm that you work for?

Secondly, does your firm demonstrate to its clients how you as employees are competent to do your jobs?

My final example is the relevance of CPD. Being a member of a professional body, you are already required to complete an annual minimum number of hours of CPD. For Financial Advisers this has now been incorporated within the Licensees (Conduct of Business) Rules 2014; which also require that CPD must be relevant. The rules put the onus on the licensee to ensure that the relevance requirement is met.

Although our guidance note on training and competency schemes fails to go as far as the requirements set out in the ESMA consultation, in moving forward this is an area that will need consideration. Perhaps as you review and assess your training and competence scheme, there are elements in the guidelines that you should also think about incorporating.

If you are interested in what ESMA is proposing, the consultation period is still open and is due to end on 10 July. As the Commission, we will be following the outcome to explore any areas which could cause Guernsey a problem in the future.

I would like to round off my presentation today by hopefully bringing qualification and competence into context.

Would you consider someone who has passed their theory test as being competent to drive on the roads? No of course not – competence here is assessed by a driving test. In the UK, green 'P' plates are not obligatory but may be displayed on a vehicle by a person who has recently passed their driving test.

In some countries those that have passed their driving test are made to carry plates to indicate they are a new driver. In British Columbia this has been taken a step further. There is a graduated licensing system in which they have to pass 3 tests – a multiple choice test and then 2 road tests. After the multiple choice test the driver will have an “L” plate. The first road test is after 1 year of practice with a supervisor to get an “N” plate. After that, after having at least 24 months of safe driving with **no prohibitions**, the second road test must be passed before a full licence is issued.

Now I’m not saying that being a competent Financial Adviser is like being competent to drive a car but it draws a useful parallel.

Being brutally honest, would you employ me as a Financial Adviser? Yes I am qualified to give financial advice – I have the CISI Investment Advice Diploma - but am I competent? Or Louise? Yes she would be qualified, subject to doing some gap-fill here and there, but is she competent? Should we be let loose on your clients?

I hope this has given you something to think about. Louise and I are more than happy to take any questions – as long as these are not designed to assess our competence!

END





Guernsey Financial  
Services Commission

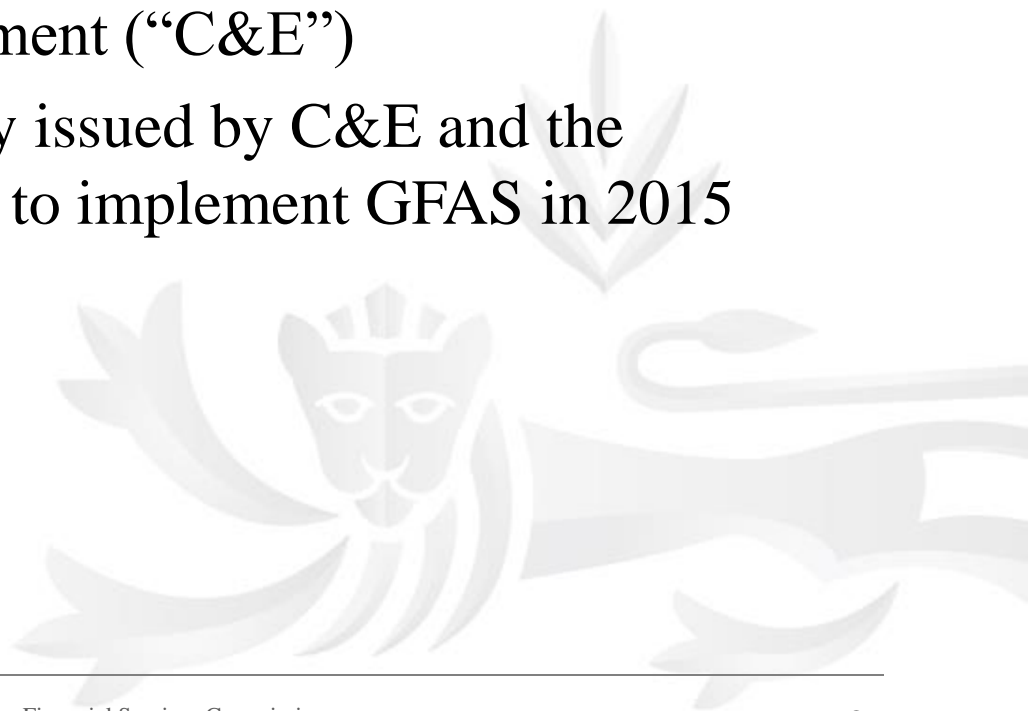
# Guernsey Financial Advice Standards ("GFAS") – Qualified and Competent

Louise Bougourd & Rosemary Stevens

# Background

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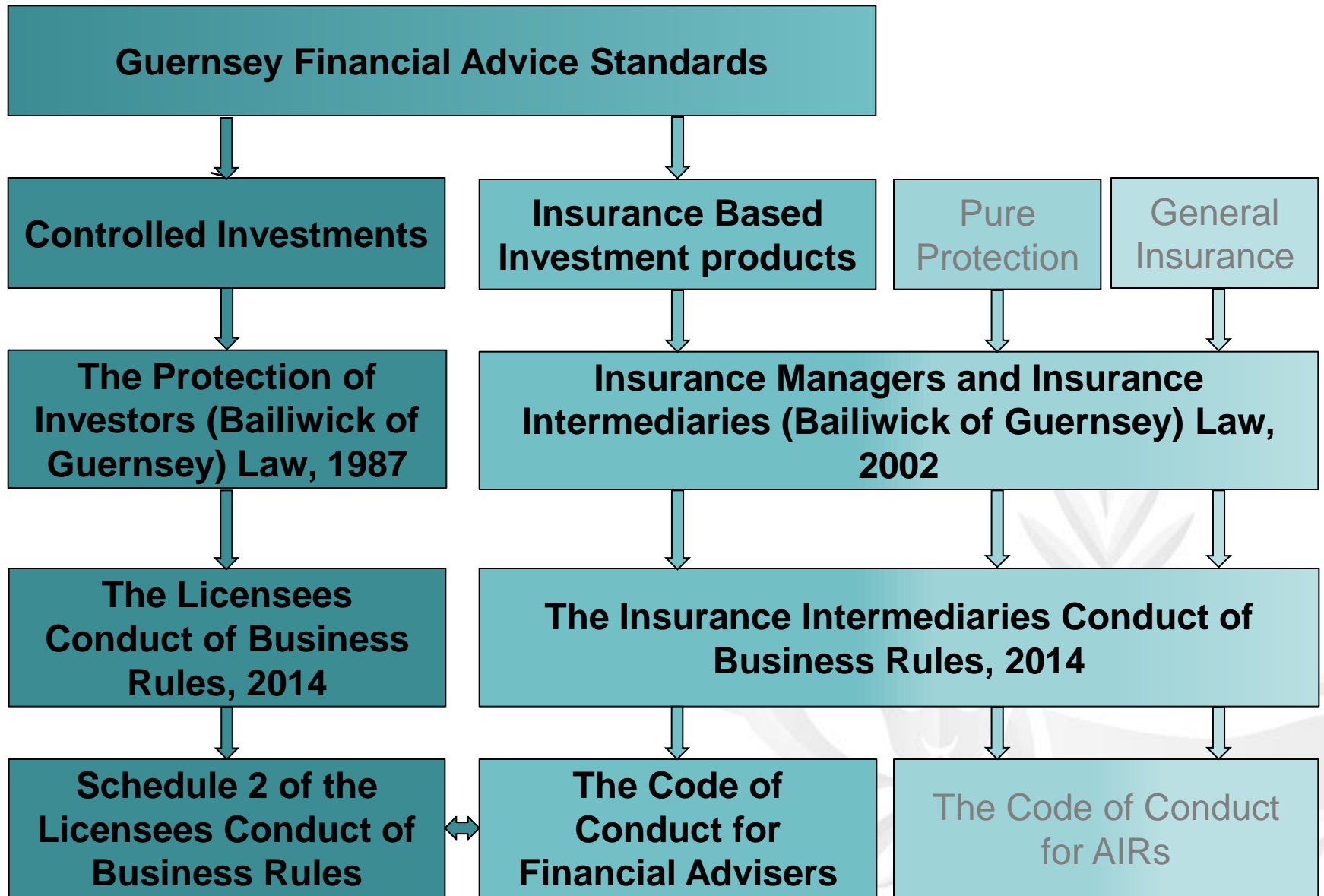
- June 2009 the FSA published Retail Distribution Review (“RDR”) proposals which were implemented on 1 January 2013
- October 2012 - consultation paper issued by Commerce & Employment Department (“C&E”)
- March 2013 – Summary issued by C&E and the Commission was asked to implement GFAS in 2015



# Steps to implementation

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- September 2013 – the Commission issued a consultation paper on the proposed implementation
- May 2014 - Feedback on consultation given
- July 2014 – Further consultation paper issued with drafts of rules and codes
- November 2014 – Feedback on consultation and new rules and codes issued
- 1 January 2015 – New rules and codes became effective



# The new rules and codes

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- Conduct of Business Rules
  - Investment licensees
  - Insurance intermediary licensees
  - Insurance manager licensees
- Codes of Conduct
  - Financial advisers (Schedule 2 to the Conduct of Business Rules for investment licensees)
  - Authorised insurance representatives

# So what has changed?

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The key areas that have been addressed are:

- Description of product selection pool
- Mandatory disclosure of commission & fees
- Mandatory qualifications and continuing professional education
- Formal authorisation of Financial Advisers
- Training and competency schemes
- These changes have been effective from 1 January 2015

# Post implementation

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- On 1 January 2015
  - New rules and codes came into effect
  - The Commission was advised of the names of all existing investment advisers who advise retail clients, now termed Financial Advisers
  - Notification requirement for licensee to advise of any changes in Financial Adviser authorisations
  - Requirement for licensees to obtain a Guernsey Statement of Professional Standing from their Financial Advisers

# Who are Financial Advisers?

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- Natural persons employed by:
  - Investment licensees
    - Advise retail clients on controlled investments
  - Insurance intermediary or manager licensees
    - Advise retail clients on long term insurance business excluding contracts of insurance on human life, permanent health and credit life assurance that are payable annually



# Qualified and Competent?

- The *Licensee* and its *Board* shall ensure that each of its *financial advisers* hold such **qualifications** to at least the minimum standard as published by *the Commission* from time to time or satisfy such requirements as *the Commission* may determine and are assessed as **competent** to undertake that position by the *licensee*

*Rule 3.6.6 of The Licensees (Conduct of Business) Rules 2014*

# Qualified?

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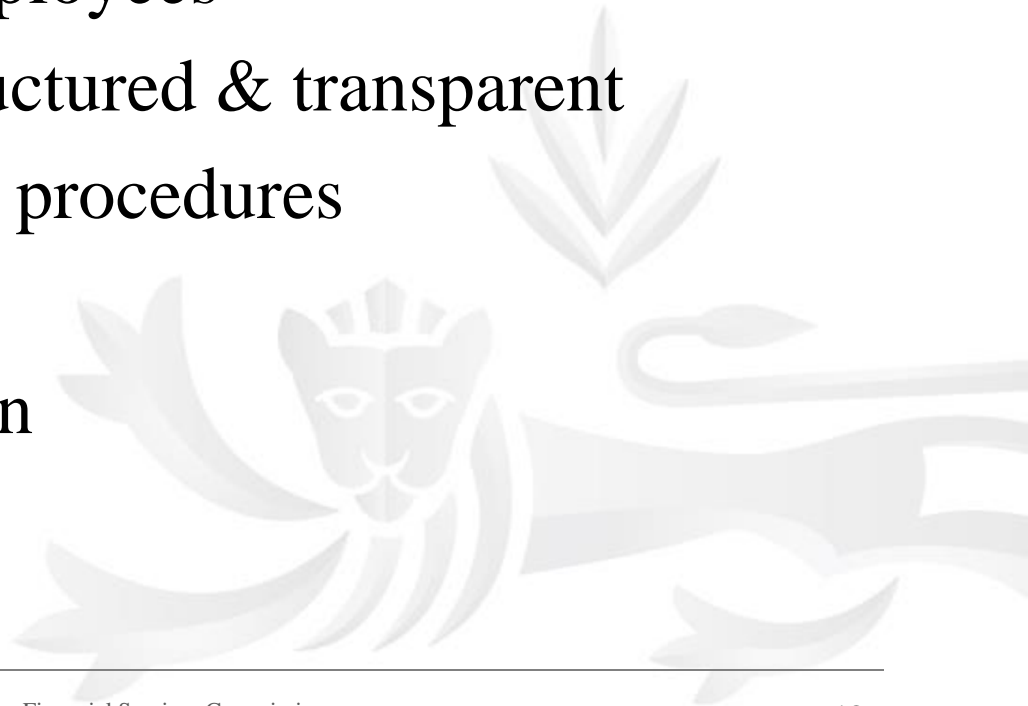
- CISI qualifications:
  - Certificate in Private Client Investment Advice & Management (plus gap-fill)
  - Investment Advice Certificate (plus gap-fill)
  - Investment Advice Diploma
  - Masters in Wealth Management (may need gap-fill)
  - Member of the Securities Institute (MSI Dip)
- Other professional qualifications
  - Refer to the acceptable qualifications table on our website

# Qualification deadline is approaching

- 31 December 2015
  - Existing advisers, who became “Financial Advisers” on 1 January 2015, must have attained an acceptable qualification
- 1 January 2016
  - Authorisation of any unqualified Financial Adviser (existing) must be revoked by the licensee

## ... and Competent

- Who determines competence?
- Training & Competence Scheme
  - Applies to all employees
  - Documented, structured & transparent
  - Clear criteria and procedures
  - New employees
  - Board information



## ... and Competent Financial Advisers

- Not only competent!
- Assess competence through:
  - Observed client meetings
  - One to one meetings
  - Ad-hoc file reviews
  - Peer review of advice
  - Complaints and client feedback
  - etc

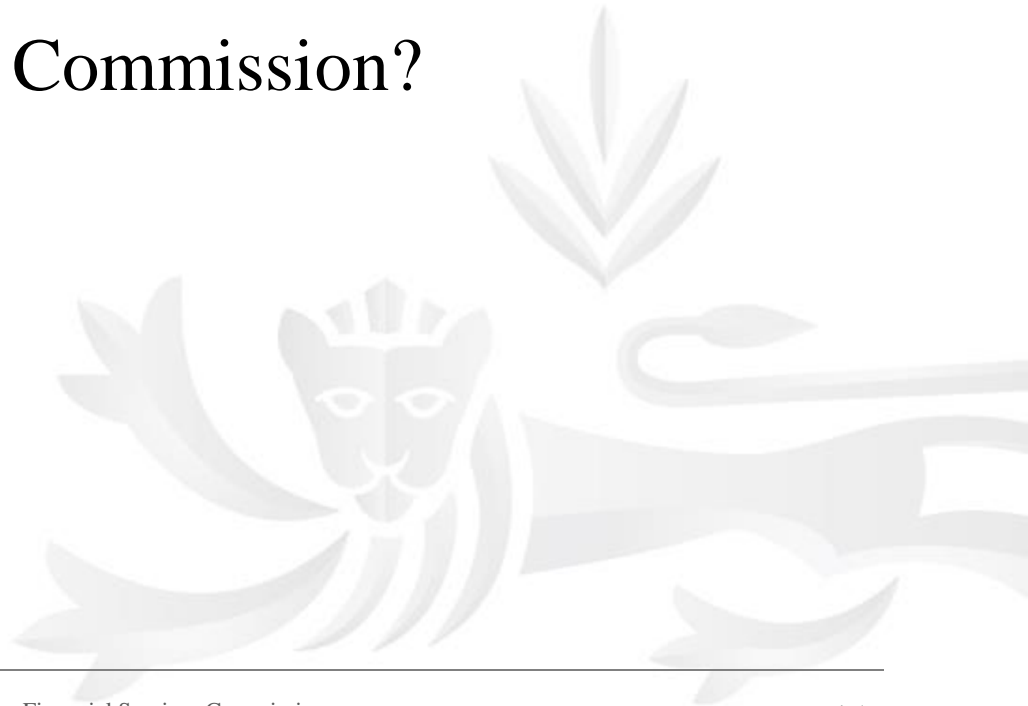
# Focus of attention

- Knowledge and skills
- Assessing competence
- Maintaining competence
- Enhanced supervision
- Record keeping



## ... and if not Competent?

- So what if the Financial Adviser is not competent?
  - In the eyes of the licensee?
  - In the eyes of the Commission?



# Why do we need to do this?

- The Principles of Conduct of Finance Business
  - Principle 1 - A licensee should observe high standards of integrity and fair dealing in the conduct of its business.
  - Principle 2 - A licensee should act with due skill, care and diligence towards its customers and counterparties.



# Why may we need to do this?

- To protect our funds industry and local consumers
  - Move with the times
  - “We want to deliver raised standards of professionalism that inspire consumer confidence and build trust” FCA
- International expectations
  - Financial Stability Board
  - MiFID II & ESMA

## Article 25(1) of MiFID II states:

- “Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of an investment firm possess the necessary knowledge and competence ...”

## Examples in draft Guidelines include:

- The Firm adopts a code of ethics to set forth the standards of business conduct and behaviour ...
- ...communicate publicly, in a way that is consistent and meaningful to clients, their criteria for demonstrating how staff comply with these guidelines.
- ... verify the relevance of continuous on-going development ..

# And finally...closer to home

- Qualified and competent to drive?
  - Theory test
  - Practical test
- Qualified and competent to give financial advice?
  - Rosemary Stevens?
  - Louise Bougourd?

# Questions

